IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3921 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALPESHBHAI KIRTIDEV TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3921 of 2004

MR YOGESH S LAKHANI for Petitioner No. 1

MR VM PANCHOLI Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 04/05/2004

ORAL JUDGEMENT

1. Rule. Learned APP Mr.V.M.Pancholi waives service

of notice of rule on behalf of respondent State.

2. Heard learned advocate Mr.Y.S.Lakhani for the applicant and learned APP Mr.V.M.Pancholi for the respondent - State.

3. It is contended on behalf of the applicant that the offences with which the applicant is charged are triable by a Magistrate. The applicant is in jail since 7th November,2003. The applicant is engaged in tourism business for many years. This is not a case where money is taken and man has disappeared. The complainant and witnesses have, in fact, travelled to the foreign country on destination. The dispute is only regarding providing illegitimate work permit. This factum is not correct and is shown to be indicated by the applicant when he was interrogated by Investigating Agency by producing affidavits of the concerned witnesses sworn before undertaking the journey and before lodgement of the F.I.R. It is, therefore, urged that application may be entertained.

4. On the other hand, Mr.Pancholi has opposed this application on the ground that the applicant has indulged into serious offence of cheating. Earlier also, he was involved in similar offence and after release on bail, he has again committed this offence. He, however, on instructions from the Investigating Officer, accepts the fact that the said person had tendered affidavits of the complainant and witnesses to the effect that they shall return to India within 10 days after completing the journey.

5. Having regard to the contentions raised before this Court, the Court is inclined to entertain this application on the ground that the offences are triable by a Magisterial Court. That the trial is likely to be delayed. That the applicant is in jail since 7th November,2003. That investigation is over and that the affidavits sworn by the complainant and witnesses prior to lodgement of complaint and undertaking journey has been indicated to the investigating agency during the course of investigation. The apprehension shown by learned APP Mr.Pancholi regarding recurrence can well be taken care of by imposing stringent condition. Hence, following order.

6. The applicant is ordered to be released on bail in connection with Khadia Police Station I-C.R.No.73 of 2003 on his executing a personal bond of Rs.1,00,000/(Rupees One lac only) with two sureties of

Rs.50,000/each to the satisfaction of the lower Court and subject to the following conditions:

(a) the applicant shall not influence the witnesses or tamper with any documents;

(b) the applicant shall not leave the Gujarat State without prior permission of the Trial Court;

(c) the applicant shall mark his presence with concerned Police Station, on 1st Sunday of every month between 9 a.m. to 2.00 p.m.;

(d) the applicant shall surrender his passport, if he is holding it, to the Trial Court;

(e) at the time of execution of the bonds, the applicant shall furnish his address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case or till further orders in that regard;

(f) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(g) the applicant shall not do any act prejudicial to the interest of the Prosecution.

7. Rule is made absolute. Direct Service is permitted.

(A.L. Dave, J.)

(vipul)